Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

FRANZ PAUL JULES

Petitioner

v.

STATE OF MARYLAND

On Petition For Writ Of Certiorari
To The Maryland Court of Special Appeals

PETITION FOR WRIT OF CERTIORARI

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27 pgs

QUESTIONS PRESENTED

1. Whether the Double Jeopardy Clause of the 5th Amendment to the United States Constitution applicable to the States through the 14th Amendment to the United States Constitution, bars subsequent prosecution of a criminal defendant for a charged and indicted greater offense of alleged possession with intent to distribute marijuana, after the jury were hung on this count albeit convicted by the same jury of an uncharged and unindicted lesser-included offense of possession of marijuana arising out of the same operative facts, conduct and charges alleged to have been committed on July 3, 2000 in Germantown, Maryland.

2. Whether the Double Jeopardy Clause of the 5th Amendment to the United States Constitution applicable to the States through the 14th Amendment to the United States Constitution, bars subsequent prosecution of a criminal defendant for alleged acts arising out of the same operative facts, conduct and charges alleged to have been committed on July 3, 2000 in Germantown Maryland for which the Defendant was previously tried before a jury that was instructed not to consider and/or decide the lesser-included offense of possession of marijuana until a verdict of guilty or not guilty is reached on the indicted and charged greater offense of possession with intent to distribute marijuana.

PARTIES TO THE PROCEEDING

1. Franz Paul Jules
2. State of Maryland

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i
PARTIES TO THE PROCEEDING..... ii
TABLE OF AUTHORITIES..... iv
JURISDICTION.....vi
CONSTITUTIONAL PROVISION INVOLVED.....1
STATUTORY PROVISIONS INVOLVED.....1
STATEMENT 2
ARGUMENT..... 5
1. THE SECOND TRIAL OF THE DEFENDANT, FRANZ PAUL JULES, FOR THE GREATER OFFENSE OF POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA AFTER BEING CONVICTED OF THE LESSER-INCLUDED OFFENSE OF SIMPLE POSSESSION OF MARIJUANA VIOLATED THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION..... 5
CONCLUSION..... 10
CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

CASES

Baith v. State, 334 Md. App. 428 (1994) 9
Green v. United States, 335 U.S. 184, 190-95 (1957)10
Green v. United States, 355 U.S. 184, 187-188, 2L. Ed. 2d 199, 78 S. Ct. 221 (1957) 5
Green v. United States, 355 U.S. 184, 78 S.Ct. 221, 2 L.Ed. 2d 199 (1957 4
North Carolina v. Pearce, 395 U.S. 711, 717, 23 L.Ed. 2d 656, 89 S. Ct. 2072 (1969) 5
See Griffiths v. State, 338 Md. 485, 489-90 (1995 9
Wadlow v. State, 335 Md. 122 (1994) 9
White v. Celotex Corp. 878 F.2d 144 (4th Circuit 1989) 8

Constitution

U.S. Const., Amdt. 5. 5

OPINIONS BELOW

The Order denying Petitioner's Writ of Certiorari to the Maryland Court of Special Appeals (Pet. App. 1a) issued on April 12, 2002 is reported at 796 A.2d 696 (Md 2002). The opinion of the Maryland Court of Special Appeals (Pet. App. 1aa – 3aa) and the opinion of the Circuit Court of Maryland for Montgomery County (Pet. App.1aaa – 2aaa) are unpublished.

JURISDICTION

The opinion of the Maryland Court of Appeals was entered on April 12, 2002. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution states:

> No person shall ... be subjected for the same offence to be twice put in jeopardy of life or limb.

U.S. Const. amend. V

This Constitutional Guarantee of the Fifth Amendment to the United States Constitution is made Applicable to the States through the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

STATUTORY PROVISIONS INVOLVED

The text of Maryland Article 27 §286 & §286D are reprinted in the Appendix to this brief. (Pet. App. 1aaaaa – 9aaaaa)

STATEMENT

On or about March 2, 2000 in Montgomery County, Maryland, the Petitioner was indicted and charged with the following:

Count 1: possession with intent to distribute controlled dangerous substance in excess of fifty pounds (marijuana in the truck) in violation of Maryland Article 27, §286(a)(1)(f);

Count 2: possession with intent to distribute controlled dangerous substance on a School property (marijuana in the truck parked in school property) in violation of Article 27, §286D;

Count 3: possession with intent to distribute controlled dangerous substance (marijuana in the truck) in violation of Article 27, §286(a)(1);

Count 4: possession with intent to distribute controlled dangerous substance in violation of Article 27, §286(a)(1);

Count 5: conspiracy to distribute a controlled dangerous substance in excess amount in violation of Maryland common law;

Count 6: Conspiracy to possess with intent to distribute controlled dangerous substance in excess of fifty pounds in violation of Maryland common law; and

Count 7: conspiracy to distribute a controlled dangerous substance in violation of Maryland common law.

Count 8: Conspiracy to possess with intent to distribute controlled dangerous substance in violation of Maryland common law; and

The Defendant was tried before a jury in the Circuit Court of Montgomery County from July 24 through 26, 2000, Honorable Judge Martha G.

Kavanaugh, presiding. At the conclusion of the government's case-in-chief, the court granted defendant's motion for judgment of acquittal with respect to Counts 5, 6, 7 and 8 alleging conspiracy in violation of Maryland common law.

The trial court instructed the jury on charged and indicted possession with intent to distribute offenses including instruction on uncharged and unindicted lesser-included offenses of simple possession. At the conclusion of defendant's case in the first trial and after the jury had begun deliberations, the trial court called the jury back and further instructed as follows:

> The Court: All right. Look at the jury instruction. It is for you to interpret the jury instruction on that. The verdict sheet. I can see why this is confusing. Let's go through it.
>
> Count 1, you go to and it is either guilty or not guilty. Either way then you go question 2. Question 2 guilty or not guilty but what I should add there if on Count 2 you find him guilty, then you go to question number 4 and you skip 3 and 3A. But if it is not guilty on 2, you go the lesser included which is 3. If it is not guilty on 3, then you will go to 3A. So each of these are lesser included. In other words, 3 is a lesser included of 2. 3A is a lesser included of 3.

The verdict sheet also reflects this instruction. (Pet. App. 1aaaa). The jury in the first trial returned a verdict finding Petitioner guilty of count 3a, (possession of marijuana) and acquitted him on Count 4 but advised the Court that the jury was unable to reach a verdict with respect to Counts 1, 2, and 3. The Court declared a mistrial as to counts 1, 2, & 3 on

July 26, 2000.

The State of Maryland instituted a second prosecution for the same offense against the defendant on Counts 1, 2, and specifically Count 3, which is the greater offense of the lesser-included offense of Count 3a that he was convicted by the jury. At the beginning of the second trial on January 30, 2001, the Petitioner preliminarily made a motion to dismiss the charges based on constitutional grounds that the second prosecution violated Petitioner's Constitutional Rights under the Double Jeopardy Clause of the Fifth Amendment applicable to the States through the Fourteenth Amendment which legally barred the second prosecution. (Pet. App. 1aaa – 2aaa). The Circuit Court of Maryland for Montgomery County ruled that the Petitioner could be prosecuted a second time because the jury did not find him not guilty of the greater offense of possession with intent to distribute of marijuana in Count 3. (Pet. App. 1aaa – 2aaa)

The jury in the second prosecution returned a verdict of guilty on Counts 1 & 3 and a not guilty verdict on Count 2. The Court merged Count 3 and with Count 1 and sentenced the defendant to a mandatory 5 year sentence.

The Defendant filed a timely appeal to the Maryland Court of Special Appeals raising the issue of double jeopardy and relying on this Court's decision in Green v. United States, 355 U.S. 184, 78 S.Ct. 221, 2 L.Ed. 2d 199 (1957). The Maryland Court of Special Appeals affirmed the judgment of the Circuit Court of Maryland. (Pet. App. 1aa – 3aa) A petition for Writ of Certiorari to the Maryland Court of Special Appeals was timely filed and denied by Maryland Court of Appeals on April 12, 2002. (Pet. App. 1a).

ARGUMENT

1. **THE SECOND TRIAL OF THE DEFENDANT, FRANZ PAUL JULES, FOR THE GREATER OFFENSE OF POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA AFTER BEING CONVICTED OF THE LESSER-INCLUDED OFFENSE OF SIMPLE POSSESSION OF MARIJUANA VIOLATED THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

A. This Court's Case Law and Precedent Establishes That Double Jeopardy Clause Bars a Subsequent Prosecution Of A Defendant Previously Convicted Of A Lesser-Included Offense, Where The Jury Had The Opportunity To Convict Of The Greater Offense.

The Double jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, provides in pertinent part: "nor shall any person be subject for the same offence to be twice be put in jeopardy of life or limb." *U.S. Const., Amdt. 5*. The United States Supreme Court has held that the double jeopardy clause protects against successive prosecutions for the same offense after acquittal or conviction and against multiple criminal punishments for the same offense. *See North Carolina v. Pearce*, 395 U.S. 711, 717, 23 L.Ed. 2d 656, 89 S. Ct. 2072 (1969).

This Court in Green v. United States, 355 U.S. 184, 187-188, 2L. Ed. 2d 199, 78 S. Ct. 221 (1957) held that "a prior conviction of a lesser charge was an implicit acquittal on the greater charge and the defendant could not be retried on the greater offense."

Green 355 U.S. at 190-95 (1957). In Green, this court reversed the first-degree murder conviction based on double jeopardy clause because the initial conviction for second-degree murder acquitted him of first-degree murder where the jury had the opportunity to convict him of first-degree murder.

The holding in *Green* supports the Defendant', Franz Paul Jules position that his conviction of simple possession of marijuana in Count 3a, which the trial court instructed the jury was a lesser-included offense of possession with intent to distribute marijuana in Count 3, serves as an acquittal of the greater offense of possession with intent to distribute in Count 3a, all arising out of the same operative facts. This case is no different from Green where this Court stated:

> "In brief, we believe this case can be treated no differently, for purposes of former jeopardy, than if the jury had returned a verdict which expressly read: "we find the defendant not guilty in the first degree but guilty of the murder in the second degree." Green 355 U.S. at 191.

In this case, the defendant was charged and tried before a jury in the Circuit Court of Montgomery County in July 2000.

At the conclusion of the government's case, the court granted defendant's motion for judgment of acquittal with respect to counts 5, 6, 7, & 8 alleging conspiracy.

At the conclusion of defendant's case in the first trial and after the jury had begun deliberations, the trial court called the jury back and further instructed as follows:

> The Court: All right. Look at the jury instruction. It is for you to interpret the jury instruction on that. The verdict sheet. I can

see why this is confusing. Let's go through it.

Count 1, you go to and it is either guilty or not guilty. Either way then you go question 2. Question 2 guilty or not guilty but what I should add there if on Count 2 you find him guilty, then you go to question number 4 and you skip 3 and 3A. But if it is not guilty on 2, you go the lesser included which is 3. If it is not guilty on 3, then you will go to 3A. So each of these are lesser included. In other words, 3 is a lesser included of 2. 3A is a lesser included of 3.

The jury in the first trial returned a verdict finding the defendant guilty of count 3a, (possession of marijuana), the lesser included offense of count 3 (possession with intent to distribute) and by implication Count 1 and Count 2, which are sentence enhancing provisions of the statute. The jury acquitted the defendant on count 4 and did not render a verdict with respect to Counts 1, 2 and 3.

The conviction of the Defendant for simple possession of marijuana in Count 3a, a lesser-included offense, serves as an acquittal of the possession with intent to distribute marijuana in count 3, a greater offense, which the jury was unable to return a verdict. The trial court specifically instructed the jury not to consider Count 3A, the lesser-included offense of simple possession of marijuana until they are unable to reach a verdict on Count 3, possession with intent to distribute, a greater offense.

A unanimous verdict was reached on the simple possession in Count 3a, a lesser-included offense; therefore, it constitutes a final verdict by a jury because the jury instruction directed the jury not to consider counts 3A, until it finds Defendant not guilty of Count 3. For that reason, the Defendant was found not guilty of at least Count 3 before the jury

considered 3a in the absence of any evidence of inconsistent verdict by the jury, which would have been raised before the jury was dismissed. See White v. Celotex Corp. 878 F.2d 144 (4th Circuit 1989)(failure to object to a jury verdict prior to discharge of the jury serves as a waiver of any objection).

Since the guilty verdict for simple possession in Count 3a, a lesser-included offense, was a final jury verdict, double jeopardy attaches to that verdict and bars subsequent prosecution for the greater offense of possession with intent to distribute marijuana that he was implicitly acquitted by the jury finding him guilty of the lesser-included offense in Count 3a of simple possession of marijuana only arising from the same conduct.

In this case, the Defendant was never indicted or charged with possession of marijuana. The possession of marijuana instruction was given by the Court as a lesser-included offense of possession with intent to distribute based on the evidence presented at trial with clear directive that it should only be considered when the jury finds the Petitioner not guilty of the greater offense of possession with intent to distribute.

Like in Green, the conviction on the lesser offense of possession of marijuana in Count 3a, acquits the Defendant of the greater offense of possession with intent to distribute marijuana in Count 3. Because retrial on Count 3, possession with intent to distribute, is barred by double jeopardy, Counts 1 and 2, which are only sentencing enhancing statutes, by implication, are also barred by double jeopardy. Count One; possession with intent to distribute controlled dangerous substance in excess amount (Article 27, §286(a)(1((f)), is a penalty enhancing statute and requires a conviction for

possession with intent to distribute to be triggered. See Baith v. State, 334 Md. App. 428 (1994)(subsection (f) dealing with possession in excess amount is simply a sentence enhancing provision and does not spell out a separate offense); *Wadlow v. State*, 335 Md. 122 (1994).

The first jury may have been hung on Counts 1, 2, and 3 but the fact that they found the defendant guilty of Count 3a(possession of marijuana) which is a lesser included offense of Count 3(possession with intent to distribute marijuana) clearly shows that they may have reached a compromise verdict by finding him guilty of the lesser included offense of simple possession instead of acquitting him on the greater charge of possession with intent to distribute and the other two sentencing enhancement counts.

For this reason and the fact that courts do not inquire into the workings of the minds of the jury, the verdict of the jury in the first trial implicates double jeopardy and serves as an absolute bar to second prosecution on Count 3, and by legal implication, Counts 1 and 2.

The Maryland Court of Special Appeals in its opinion stated:

> "In the case at bar, because the record is clear that appellant's first jury did not acquit him of any lesser-included offenses, we have a "prototypical example" of a subsequent prosecution that is not prohibited by the double jeopardy clause. See Griffiths v. State, 338 Md. 485, 489-90 (1995)"

The opinion of the Maryland Court of Special Appeals that the conviction of the Petitioner for the uncharged and unindicted lesser-included offense of possession makes Double Jeopardy inapplicable to subsequent prosecution for the greater offense of possession with intent to distribute and sentencing enhancement counts, is limiting and inconsistent

with this Court's opinion and precedent in Green v. United States, 335 U.S. 184, 190-95 (1957).

Therefore, in the absence of possession with intent to distribute charged in Count 3, which is legally barred by the Double Jeopardy Clause, aforestated, the subsequent prosecution, conviction, and sentence of mandatory five (5) years for possession in excess amount charged in Count 1 must be reversed.

CONCLUSION

For the foregoing reasons, the judgment of the Maryland Court of Appeals and Maryland Court of Special Appeals should be reversed and the case should be remanded to that Court with instructions to vacate Defendant's conviction.

Respectfully submitted,
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By: _____

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APPENDIX A

FRANZ PAUL JULES	* IN THE
	*
	* **COURT OF APPEALS**
	*
V.	* **OF MARYLAND**
	*
	* **Petition Docket No. 636**
STATE OF MARYLAND	* **September Term, 2001**
	*
	* **(No. 424 Sept. Term 2001,**
	* **Court of Special Appeals)**

****

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

Dated: April 12, 2002

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 424

September Term, 2001

FRANZ PAUL JULES

v.

STATE OF MARYLAND

Murphy, C.J.,
Kenney,
Karwacki, Robert L.,
(Retired, Specially
Assigned),

JJ.

Opinion by Murphy, C.J.

Filed: December 19, 2001

In the Circuit Court for Montgomery County, a jury (Hon. Ann S. Harrington, presiding) convicted Franz Paul Jules, appellant, of possession with intent to distribute fifty pounds or more of marijuana and related offenses. Appellant argues that we must reverse these convictions because:

1. THE SECOND TRIAL OF (APPELLANT) VIOLTAED THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND DOUBLE JEOPARDY BASED ON MARYLAND COMMON LAW.

2. THE EVIDENCE PRESENT[ED] BY THE GOVERNMENT WAS INSUFFICIENT TO SUPPORT [APPELLANT'S] CONVICTION FOR POSSESSION WITH INTENT TO DISTRIBUTE AND POSSESSION WITH INTENT TO DISTRIBUTE IN EXCESS AMOUNT.

We are persuaded that there is no merit in either of these arguments, and we shall therefrom affirm the judgments of conviction.

I

It is true that the guilty verdicts at issue in this case were returned on January 31, 2001 at the conclusion of appellant's "second" jury trial. It is also true that the charges of which appellant was convicted by the "second " jury had also been presented to a "first" jury, whose members declared that they were unable to arrive at a unanimous verdict with respect to those charges. The "first" jury, however, convicted appellant of possession of marijuana-a "lesser-included" offense of the offenses at issue in this appeal. Appellant argues hiss second trial violated the rule established by the United States Supreme Court in Green. V. United States, 355 U.S. 184, 78 S.Ct.

221, 2L Ed. 2d 199(1957). In that case, however, when the first jury convicted the Petitioner of the lesser-included offense, it did not announce that it was "hung" on the greater offense. In the case at bar, because the record is clear that appellant's first jury did not aquit him of any lesser-included offenses, we have a ""prototypical example"of a subsequent prosecution that is not prohibited by the double jeopardy clause. See Griffiths V. State, 338 Md. 485, 489-90(1995).

Appellant also argues that Griffiths does not apply to this case because the first jury convicted him of an "uncharged" lesser-included offense. We disagree. Had appellant's first jury acquitted him of "simple" possession, that acquittal would have prevented a retrial of the charges at issue. Thus, it if of no consequence that the first jury convicted appellant of an uncharged lesser-included offense.

II

Appellant's "sufficiency" argument has not been preserved for our review because, after moving for judgment at the close of the State's case-in-chief, appellant presented evidence, but did not thereafter renew his motion for judgment. See Md. Rule 4-324(c) and William's v. State, 131Md. App. 1, cert, denied, 359 Md.335(2000).

Had the issue been preserved, however, we would hold that the State's evidence –which included appellant's statement top law enforcement officers, officer's observation of appellant, and the seizure of items belonging to appellant found in places that linked him to the contraband-was sufficient to establish appellant's guilt of each offense at issue in this appeal.

JUDGMENT AFFIRMED
APPELLANT TO PAY THE COST.

APPENDIX C

CIRCUIT COURT OF MARYLAND
FOR PRINCE GEORGE'S COUNTY

STATE OF MARYLAND	*
	* Case No.: C-87342
V.	*
	* Judge: A. Harrington
FRANZ PAUL JULES	*
Defendant	*

****

TRANSCRIPT OF OPINION OF CIRCUIT COURT ON PAGES 5 THROUGH 7 OF THE PROCEEDING ON JANUARY 30, 2001

MR. IWEANOGE: Your Honor, a preliminary legal issue that I wanted to raise.

At the first trial, the jury was hung as to count one which is the possession with intent to distribute marijuana in excess of 50 pounds, hung on count two which is possession with intent to distribute marijuana on school property, and then count three which is possession with intent to distribute marijuana.

However, they found Mr. Jules guilty of simple possession which is count 3-A which legally meant that 3 doesn't realy apply because he cannot be found guilty of possession and then the jury would find him guilty again or not guilty as to possession with intent to distribute.

By finding him guilty of marijuana as to count 3-A, he cannot legally be put to trial again on possession with intent to distribute on that specific marijuana - -

THE COURT: I know the verdict sheet is in the

file. Do you have your copy handy?

MR. IWEANOGE: I have a copy. This is my copy.

THE COURT: Let me take a look at the one Judge Kavanaugh filed. According to the verdict sheet filed by Judge Kavanaugh at tab number 68, she declared a mistrial on counts 1,2, and 3. Count 3 was possession with intent to distribute marijuana. She did submit to the jury the lesser included of count number 3 as count 3-A possession of marijuana.

However, because the jury didn't find him not guilty of 3, I don't think your argument is correct this jury is foreclosed from considering that count. It is my position that it is still available for consideration by the jury.

MR. IWEANOGE: Even though they found him guilty of the lesser included of 3-A?

THE COURT: yes, because all of the elements of 3-A are within 3, but there is an additional element of intent. They did not reach a decision that the state had not proved that. They couldn't decide it, so I believe that count is still for jury.

MR. IWEANOGE: So it will be counts 1, 2, and 3.

THE COURT: We are going to proceed on counts 1, 2, and three.

APPENDIX D

CIRCUIT COURT OF MARYLAND
FOR PRINCE GEORGE'S COUNTY

STATE OF MARYLAND *
* Case No.: C-87342
V. *
*
FRANZ PAUL JULES *
Defendant *
****

VERDICT SHEET

1) As to the charge of Possession With Intent to Distribute Marijuana in Excess of 50 Pounds, how do you find Franz Jules?

Guilty _____ Not Guilty_____

Go on to Question #2

2) As to the charge of Possession With Intent to Distribute Marijuana on School Property, how do you find Franz Jules?

Guilty _____ Not Guilty_____

Go on to Question #3

3) As to charges of Possession With Intent to Distribute Marijuana, how do you find Franz Jules?

Guilty _____ Not Guilty_____

If "Not Guilty," go to Question #3a

If " Guilty," go to Question #4

3a) As to the charge of simple Possession of Marijuana, how do you find Franz Jules?

Guilty _____ Not Guilty_____

Go on to Question #4

4) As to the Charge of Possession With Intent to Distribute Marijuana, how do you find Franz Jules?

Guilty _____ Not Guilty_____

If "Not Guilty," go to Question #4a

If " Guilty," go no further.

4a) As to the charge of simple Possession of Marijuana, how do you find Franz Jules?

Guilty _____ Not Guilty_____

Jury Foreperson

APPENDIX E

ARTICLE 27. § 286. Unlawful activities concerning controlled substances

(a) Except as authorized by this subheading, it is unl awful for any person:

(1) To manufacture, distribute, or dispense, or to pos sess a controlled dangerous substance in sufficient qu antity to reasonably indicate under all circumstances an intent to manufacture, distribute, or dispense, a co ntrolled dangerous substance;

(2) To create, distribute, or possess with intent to dis tribute, a counterfeit controlled dangerous substance;

(3) To manufacture, distribute, or possess any punch , die, plate, stone, or any other equipment which is de signed to print, imprint, or reproduce the trademark, t rade name, or other identifying mark, imprint, or devic e of another or any likeness of any of the foregoing up on any drug or container or labeling thereof so as to r ender the drug a counterfeit controlled dangerous substance;

(4) To manufacture, distribute, or possess any machi ne, equipment, instrument, implement, device, or com bination thereof which is adopted for the production o f controlled dangerous substances under circumstanc es which reasonably indicate an intention to use such item or combination thereofto produce, sell, or dispe nse any controlled dangerous substance in violation of the provisions of this subheading;

(5) To keep or maintain any common nuisance which means any dwelling house, apartment, building, vehic le, vessel, aircraft, or any place whatever which is reso rted to by drug abusers for purposes of illegally admin istering controlled dangerous substances or which is u sed for the illegal manufacture, distribution, dispensin g, storage or concealment of controlled dangerous substances or controlled paraphernalia, as defined in § 287(d) of this subheading; or

(6) To possess, pass, utter, make, or manufacture a f
alse, forged, or altered prescription or prescriptions fo
r a controlled dangerous substance with the
intent to distribute the controlled dangerous substan
ce. Information communicated to an authorized pres
criber in an effort to obtain a controlleddangerous sub
stance in violation of the provisions of this item shall
not be deemed a privileged communication.

(b) Any person who violates any of the provisions of s
ubsection (a) of this section with respect to:

(1) A substance classified in Schedules I or II which i
s a narcotic drug is guilty of a felony and is subject to
imprisonment for not more than 20 years, or a fine of
not more than $25,000, or both.

(2) Phencyclidine, 1-(1-henylcyclohexyl) piperidine, 1-
phenylcyclohexylamine, or 1-
piperidinocyclohexanecarbonitrile, classified in Sched
ule II, or n-ethyl-1-phenylcyclohexylamine, 1-(1-
phenylcyclohexyl)- pyrrolidine, 1-(1-(2-thienyl)-
cyclohexyl)-piperidine, lysergic acid
diethylamide, or 750 grams or more of 3, 4-
methylenedioxymethamphetamine (MDMA), classifie
d in Schedule I, is guilty of a felony and is subject to
imprisonment for not more than 20 years, or a fine of
not more than $20,000, or both.

(3) Any other controlled dangerous substance classifi
ed in Schedule I, II, III, IV, or V shall, upon conviction
, be deemed guilty of a felony and sentenced to a term
of imprisonment for not more than 5 years or a fine of
notmore than $15,000, or both. Any person who has
previously been convicted under this paragraph shall
be sentenced to imprisonment for not less than 2
years. The prison sentence of a person sentenced un
der this paragraph as a repeat offender may not be su
spended to less than 2 years, and the person may
be paroled during that period only in accordance with
§ 4-305 of the Correctional Services Article.

(c)(1) A person who is convicted under subsection (b)(
1) or subsection (b)(2) of this section, or of conspiracy

to violate subsection (b)(1) or (b)(2) of this section shall be sentenced to imprisonment for not less than 10 years and subject to a fine not exceeding $100,000 if the person previously has been convicted:

(i) Under subsection (b)(1) or subsection (b)(2) of this section;

(ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section; or

(iii) Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) of this section if committed in this State.

(2) The prison sentence of a person sentenced under subsection (b)(1) or subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section or any combination of these offenses, as a second offender may not be suspended to less than 10 years, and the person may be paroled during that period only in accordance with § 4-305 of the Correctional Services Article.

(3) This subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health - General Article, because of the length of sentence, if imposed under subsection (b)(1) of this section.

(d)(1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section or of conspiracy to violate subsection (b)

(1) or subsection
(b)(2) of this section shall be sentenced to imprisonme nt for the term allowed by law, but, in any event, not l ess than 25 years and subject to a fine not exceeding $100,000 if the person previously:

(i) Has served at least 1 term of confinement of at lea st 180 days in a correctional institution as a result of a conviction of a previous violation of this section or § 286A of this article; and

(ii) Has been convicted twice, where the convictions do not arise from a single incident:

1. Under subsection (b)(1) or subsection (b)(2) of thi s section;

2. Of conspiracy to violate subsection (b)(1) or subs ection (b)(2) of this section;

3. Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) o f this section if committed in this State; or

4. Of any combination of these offenses.

(2) Neither the sentence required under paragraph (1) of this subsection nor any part of it may be suspende d, and the person may not be eligible for parole except in accordance with § 4-305 of the Correctional Services Article.

(3) A separate occasion shall be considered one in wh ich the second or succeeding offense is committed aft er there has been a charging document filed for the preceding offense.

(e)(1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section or of conspiracy t o violate subsection (b)(1) or subsection (b)(2) of this se ction shall be sentenced to imprisonment for the term allowed by law, but in any event, not less than 40 year s and subject to a fine not exceeding $100,000 if the p erson previously has served 3 separate terms of confinement as a result of 3 separate convictions:

(i) Under subsection (b)(1) or subsection (b)(2) of this section;

(ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section;

(iii) Of an offense under the laws of another state, the District of Columbia, or the United States that would be a violation of subsection (b)(1) or subsection (b)(2) of this section if committed in this State; or

(iv) Of any combination of these offenses.

(2) Neither the sentence required under paragraph (1) of this subsection nor any part of it may be suspended, and the person may not be eligible for parole except in accordance with § 4-305 of the Correctional Services Article.

(f)(1) If a person violates subsection (a)(1) of this section and the violation involves any of the following controlled dangerous substances, in the amounts indicated, the person is subject to the penalties provided in paragraph (3) of this subsection upon conviction:

(i) 50 pounds or more of marijuana;

(ii) 448 grams or more of cocaine or 448 grams or more of any mixture containing a detectable amount of cocaine;

(iii) 50 grams or more of cocaine base, commonly known as "crack";

(iv) 28 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium or any mixture containing 28 grams or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of morphine or opium;

(v) 1,000 dosage units of lysergic acid diethylamide or any mixture containing the equivalent of 1,000 dosage units of lys

ergic acid
diethylamide;

(vi) 16 ounces or more of phencyclidine in liquid for m or 448 grams or more of any mixture containing ph encyclidine; or

(vii) 448 grams or more of methamphetamine or any mixture containing 448 grams or more of methamphet amine.

(2) For purposes of determining the quantity of a con trolled dangerous substance under paragraph (1) of th is subsection, the quantity of controlled dangerous su bstances involved in individual acts of manufacturing, distribution, dispensing, or possessing with intent to distribute may be aggregated if each aggregate act of manufacturing, distribution, dispensing, or possessing with the intent to distribute occurred within a period of 90 days.

(3)(i) A person convicted of violating paragraph (1) of t his subsection is guilty of a felony and shall be subject to a fine not exceeding $100,000 and shall be sentenc ed as otherwise provided for in this section, except tha t it is mandatory upon the court to impose no less tha n 5 years' imprisonment, and neither that term of imp risonment nor any part of it may be suspended.

(ii) The person may not be eligible for parole except i n accordance with § 4-305 of the Correctional Services Article.

(g)(1) In this subsection, "drug kingpin" means a pers on who occupies a position of an organizer, supervisor , financier, or manager as a coconspirator in a conspiracy to manufacture, distribute, dispense, bring into, or transport in the State controlled dangero us substances.

(2) A drug kingpin who conspires to manufacture, dis tribute, dispense, bring into, or transport in the State controlled dangerous substances in one or more of the amounts described under subsection (f) of this section is guilty of a felony and on conviction is subje ct to:

(i) Imprisonment for not less than 20 nor more than 40 years without the possibility of parole, and it is m andatory on the court to impose no less than 20 years' imprisonment, no part of which may be suspended; a nd

(ii) A fine of not more than $1,000,000.

(3) The provisions of § 6-220 of the Criminal Procedure Article are not applicable to a conviction under this subsection.

(4) Notwithstanding any other provision of this subhe ading, a conviction under this subsection does not me rge with the conviction for any offense which is the obj ect of the conspiracy.

(5) Nothing contained in this subsection prohibits the court from imposing an enhanced penalty under § 29 3 of this article. This subsection may not be construed to preclude or limit any prosecution for any other criminal offense.

(6) It is not a defense to a prosecution under this sect ion that the controlled dangerous substance was brou ght into or transported in this State solely for ultimate distribution or dispensing in another jurisdiction.

ARTICLE 27. §286D. Distribution near schools

(a) A person who manufactures, distributes, dispense s, or possesses with intent to distribute a controlled d angerous substance in violation of § 286(a)(1) of this s ubheading, or who conspires to commit any of these of fenses, is guilty of a felony if the offense occurred:

(1) In, on, or within 1,000 feet of any real property ow ned by or leased to any elementary school, secondary school, or school board, and used for elementary or se condary education, as defined under § 1-101 of the Education Article, regardless of whether:

(i) School was in session at the time of the offense; o r

(ii) The real property was being used for other purpo ses besides school purposes at the time of the offense; or

(2) On a school vehicle, as defined under § 11-154 of the Transportation
Article.

(b)(1) A person who violates the provisions of this sect ion, on conviction, shall be subject to the following pe nalties:

(i) For a first offense, imprisonment for not more tha n 20 years or a fine of not more than $20,000 or bot h; or

(ii) For a second or subsequent offense, imprisonme nt for not less than 5 or more than 40 years or a fine o f not more than $40,000 or both. It is mandatory for t he court to impose a minimum sentence of 5 years, w hich may not be suspended, and a person is not eligibl e for parole during that period, except in accordance w ith § 4-305 of the Correctional Services Article.

(2) A sentence imposed under this subsection shall b e served consecutively to any other sentence imposed.

(c) Notwithstanding any other provision of law, a conv iction arising under this section may not merge with a conviction for a violation of § 286 or § 286C of this sub heading.

(d)(1) In a prosecution under this section, a map prod uced or reproduced byany municipal or county agency or department for the purpose of depicting the locatio n and boundaries of the area on or within 1,000 feet of the property of a public or nonpublic elementary or se condary school that is used for school purposes, or a t rue copy of the map, shall, if certified as a true copy b y the custodian of the record, be admissible and shall constitute prima facie evidence of the location and bou ndaries of the area, if the governing body of
the municipality or county has approved the map as a n official record of the location and boundaries of the area.

(2) A map approved under this section may be revise d from time to time by the governing body of the muni cipality or county.

(3) The original of every map approved or revised und

er this section, or a true copy, shall be filed with the municipality or county and shall be maintained as an official record of the municipality or county.

(4) This section does not preclude the prosecution fro m introducing or relying upon any other evidence or t estimony to establish any element of this offense.

(5) This section does not preclude the use or admissi bility of map or diagram other than the one which has been approved by the municipality or county.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11TH day of JULY, 2002, I caused to serve three (3) copy of the foregoing document:

PETITION FOR WRIT OF CERTIORARI TO THE MARYLAND COURT OF APPEALS

X by placing a true copy thereof in a sealed envelope, with postage prepaid, and causing same to be mailed by first class mail to the person at the address below;

__ by causing to be personally delivered a true copy thereof to the person at the address set forth below;

__ by FEDERAL EXPRESS/ AIRBORNE EXPRESS to the person at the address set forth below;

__ by telefaxing with acknowledgement of receipt to the person at the address set forth below:

__ by e-mail with acknowledgement of receipt to the person at the address set forth below:

J. Joseph Curran, Jr.
Attorney General

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Assistant Attorney General
Office of the Attorney General
Criminal Appeals Division
200 St. Pauls Place
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(410) 576-6422
Attorneys for the State of Maryland

Dated: 11th day of JULY 2002

John O. Iweanoge, Jr.